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[APPELLATE JURISDICTION]
(PRIVY COUNCIL)

LORD ATKIN, LORD ALNESS AND SIR SIDNEY ROWLATT.

October 22, 1934.

CHEE WOR LOK & ORS.....Appellants.

v.

YEOH SAW GEOK.....Respondent.

[PRIVY COUNCIL APPEAL No. 108 of 1933]

Benevolent Societies—rules—construction—member in default—cesser of membership—forfeiture of privileges.

One of the Rules of a benevolent association required that a member should make a monthly deposit of the sum of $2 and another rule provided that the monthly deposit should be paid in advance on or before the 15th of every month and that "if his monthly deposit shall be two months in arrear he shall be notified, and failing payment of same in full after the expiration of 21 days he shall *ipso facto* cease to be a member and forfeit all privileges as a member."

Held, that where a forfeiture is relied on, it has to be reasonably clear that the forfeiture operates.

Held further, on the true construction of the rule that in order to work a forfeiture a monthly deposit has to be in arrear for the period of two months; in other words, that the period of two months applies to the period of default for each deposit and not to the number of subscriptions that have to be in arrear.

Appeal from the judgment of the Court of Appeal of the Supreme Court of the Straits Settlements (Huggard, C.J., Mudie and Cobbett, JJ.) sitting at Penang.

The facts of the case are sufficiently stated in the Judgment below.

The appeal was heard on October 22nd, 1934 before Lord Atkin, Lord Alness and Sir Sidney Rowlatt.

Sergeant Sullivan and The Rt. Hon'ble Sir Henry Wynne for the appellants.

The respondent did not appear.

Cur. Ad. Vult.

The judgment of the Board was delivered by **LORD ATKIN.**—

This is an appeal from an order of the Court of Appeal of the Supreme Court of the Straits Settlements who set aside an order of Mr. Justice Sawrey-Cookson. The action was brought by the widow of a man who had been a member of the Chinese Benevolent Association at Penang, and it was for a declaration that the husband of the plaintiff at the date of his death was still a member of the Association and had not, as the Association claimed, automatically ceased to be a member by reason of default in paying subscriptions. The rules of the Benevolent Association are expressed in English, and the deceased had been a member since November of 1916. The objects of the Association are to encourage thrift and to make provision for a widow.

The rules state that membership commences from the first day of the month upon payment of deposit and fee for certificate of membership within thirty days of notice of election, and on payment of his monthly deposit and a certificate fee of $2 a certificate of membership will be issued. Then they provide that "Each member shall deposit with the Association monthly the sum of $2. Any member who wishes to deposit monthly an extra amount may do so." Then there comes the clause upon which the dispute arises: "The monthly deposit shall be paid in advance by every member on or before the 15th day of the month. In default he shall be liable to pay a fine of 10 cents for each such failure, which shall be debited to his account, and if his monthly deposit shall be two months in arrear he shall be notified, and failing payment of same in full after the expiration of 21 days he shall *ipso facto* cease to be a member and forfeit all privileges as a member"; and then it provides what shall happen if he is readmitted.

Now the facts in this case are that this man paid his monthly deposit for June in due course on or before the 15th June. In July he did not make any payment. Apparently he was ill—though that is immaterial for this case—and he died on the 24th September. In August he paid no deposit, and on the 16th August, in assumed accordance with the rule, he was notified that his deposits were in default. On the 8th September he thereupon, according to the Association, automatically ceased to be a member, and, as has been said, he died on the 24th September of 1932.

Now the question is whether on the 16th August, when notice was given under the rule, his monthly deposit was, in fact, two months in arrear. The widow says no, the monthly deposit of July being due on the 15th July, on the 16th July it was one day in arrear and on the 16th August it was one month and one day in arrear and not two months in arrear. Therefore, it is said that the rule did not apply and that the man had not ceased to be a member. On the other hand, the Association say that is not the meaning of the rule; that what it does mean is that if subscriptions in respect of two months are in arrear then the rule applies. A monthly deposit, it is said, must be treated as something continuous, and the only question is whether the subscription in respect of two months is in arrear. It appears to their Lordships that one way of stating the question is whether the words mean "if any monthly deposit shall be two months in

arrear," or whether they mean "if two monthly deposits are in arrear," which is the contention of the Association.

Now their Lordships think that it has to be remembered, in dealing with a clause of this kind, that it is of the nature of a forfeiture, and it has got to be reasonably clear that the forfeiture operates. Their Lordships find themselves unable to come to the conclusion that the Association have made out that the forfeiture did apply in this case. On the contrary, they agree with the view taken by the Court of Appeal of the Supreme Court. They think that on the true construction of this rule it means that in order to work a forfeiture a monthly deposit has to be in arrear for the period of two months; in other words, that the period of two months applies to the period of default for each deposit and not to the number of subscriptions that have to be in arrear.

It is a simple question of construction. One can quite understand another view being taken, and no question arises but that the Association have put forward a *bona fide* claim in this case, intending to maintain what they think is the true construction of their rule. In their Lordships' opinion that is not the true construction of the rule, and therefore this appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

Appeal dismissed.

Solicitors for the Appellants—
Herbert Z. Deane & Co.

[APPELLATE CIVIL JURISDICTION]

THOMAS, C.J. (F.M.S.), PRICHARD & TERRELL, JJ.

January 26, 1935.

N. N. SOCKALINGAM CHETTIAR vs. A.R.S.P. PALANIAPPA CHETTIAR.

[SINGAPORE SUIT No. 642 of 1933.]

[SINGAPORE APPEAL No. 9 of 1934.]

Limitation of Suits—Ordinance No. 56 (Limitation) articles 41 and 42—Money deposited by Customer with Banker repayable on demand—Starting point of period of Limitation.

When a customer deposits money with his banker such money being repayable on demand, the period of limitation does not begin to run until a demand for payment is made.

Judgment of Huggard, C.J. reported in 1934 S.S.I.R. 276; 3 Mal. L.J. 207 affirmed; Thomas C.J., F.M.S., dissenting as to part of the Judgment not affecting the question of limitation.

Appeal to the Court of Appeal from the Judgment of Huggard C.J. reported in (1934) S.S.L.R. p. 276 and 3 Mal. L.J. 207.

The appeal came on for hearing in Singapore on the 3rd and 4th December before Thomas C.J., F.M.S., and Prichard and Terrell JJ. The facts and arguments are fully set out in the report of the case in the Court below.

K. K. O'Connor, for Appellant (Defendant)
E. R. Koek, for Respondent (Plaintiff)

Cur. Ad. Vult.

THOMAS, C.J., (F.M.S.)—I have had the advantage of reading the judgment of my learned brother a'Beckett Terrell. I agree with it on the question of limitation, and I do not wish to add anything to what he has said.

I should like, however, to deal with that part of the claim which relates to the sum of $6,996.71.

Turning to the pleadings, the plaintiff in paragraph 6 of his statement of claim states that on the 6th of February 1931, the amount standing to the credit of the Seethai deposit account amounted to $6,735.33¾, and was then credited by Suppiah in the name of the plaintiff. In paragraph 7 of the statement of claim the plaintiff states that this deposit account with interest to date was stated and settled between the plaintiff and Suppiah at the sum of $6,996.71¼. Suppiah caused an account to be written by the defendant, and handed to the plaintiff showing a balance due to the plaintiff by Suppiah at the said date of the said sum. The defendant in his defence states that:—

> "As to paragraph 6 of the statement of claim, he admits that on the 6th of February, 1931 Suppiah caused entries to be made in his books purporting to credit the plaintiff in place of the said Seethai with the sum of $6,735.33¾ then standing to the credit of the said account, but the said Seethai was at such date dead. Such transaction was carried out by Suppiah at the request of the plaintiff who purported to act as attorney of the said Seethai without disclosing the fact that she was then dead, and who intended thereby to avoid payment of estate duty upon the said sum. Defendant will contend that such transaction was ineffectual to pass any rights in the said sum to the plaintiff."

The defence in paragraph 5 admits paragraph 7 of the statement of claim.

With regard to the allegation that the death of Seethai Achi was not disclosed, the learned trial Judge has found that Suppiah knew that she was dead, and was present at her funeral ceremonies in India in 1927.

The learned trial Judge has stated in his Judgment that the point in dispute was whether the deposit account was the property of the plaintiff or the property of Seethai Achi.